United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: September 21, 2007

TO : William M. Pate, Acting Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Famsa, Inc. 530-4080-5012
Case 21-CA-37667

This Levitz[1] case was submitted for advice on whether the Employer was privileged to withdraw recognition from the Union based upon a petition that arguably did not unambiguously demonstrate a loss of majority employee support, where the Region has obtained evidence demonstrating that the Union actually has lost employee majority support.

In agreement with the Region, we conclude that complaint is inappropriate where the investigatory evidence establishes an actual loss of employee support for the Union.

The facts of this case primarily involve the efforts of one employee to gather signatures on a petition establishing his fellow employees' desire to rid themselves of the Union. After discussions among several of the employees expressing dissatisfaction with the Union, they enlisted this employee to draft and circulate a petition. He drafted a petition, began soliciting signatures, held an employee meeting to discuss the issue, and obtained the signatures of a large percentage of the bargaining unit. When he presented the petition to a human resources manager, she notified him that the wording on the petition did not specifically evince a desire to get rid of the Union, but sounded more in the nature of a desire to no longer pay union dues. According to the employee, he then drafted a second document and walked it around to the employees who had signed the first one. He explained to them that the human resources manager would not accept the first document because it did not clearly express a desire to get rid of the Union, and that this second document was designed to clarify their intent to no longer be represented by the Union. Many of the employees offered to sign the second document, but the solicitor declined,

[1] Levitz Furniture Company of the Pacific, 333 NLRB 717 (2001).

believing that it would be sufficient if he attached the signatures from the first document to the second. He then stapled the second document onto the first one that contained the signatures, and presented it to the human resources manager. She accepted the document, compared the signatures against the payroll records, and within a week the Employer formally withdrew recognition from the Union.

It might be questioned whether these petitions on their face demonstrate employee loss of support for the Union. Thus, the language of the first petition could be read to concern only dues deduction and the second petition was not separately signed. We need not resolve this question, however, because regardless of whether the Employer had objective evidence of actual loss of support, the undisputed evidence establishes that a majority of employees no longer desired union representation.

The expression of employee sentiment is apparent from the description provided by the single employee who solicited the signatures. He describes that when he solicited each person who signed the first petition he told them the same thing, "that we no longer wanted the Union," and "that the petition was to no longer belong to the Union, that we wanted nothing at all to do with the Union." Thus, his testimony clarifies that regardless of any ambiguity in the language, employees understood they were expressing a desire not to be represented when they signed the petition. Although the solicitor was not as specific as to whom he approached regarding the second petition, nothing in his testimony negates the sentiments originally expressed. He describes speaking "to most everyone" about the second document; that he "spoke to each person on the list, with a few exceptions." He told each person that he "had to draft a new letter because we were not clear that we wanted to get rid of the Union in the first letter," and that "every person I spoke to said that they were still in agreement with getting rid of the Union."

It has long been the practice of successive General Counsels that if the General Counsel possesses evidence establishing that a union has actually lost its majority status, there is no basis to issue complaint alleging an unlawful withdrawal of recognition.[2] This long-standing

[2] See, e.g., Christy Webber Landscapes, Inc., Case 13-CA-41300, Advice Memorandum dated December 29, 2003; Pat's Food Center, Inc., Case 7-CA-37043, Advice Memorandum dated June 21, 1995; Ayers Corporation, Case 21-CA-29761, Advice Memorandum dated July 18, 1994, J.P. Data Com, Cases 21-CA-26562 and 26579, Advice Memorandum dated April 3, 1989.

policy recognizes that issuance of complaint to impose a collective-bargaining representative on employees against their stated will would run directly afoul of the policies of the Act. Since the evidence here establishes that the Union suffered an actual loss of its majority support, it would not effectuate the purposes of the Act to issue a bargaining order when it is clear that the Union is no longer the majority representative.

Accordingly, the Region should dismiss this charge, absent withdrawal.

B.J.K.